

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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FIDELITY & DEPOSIT CO. OF MARYLAND,

Plaintiff(s),

ORDER

CV 05-3986 (JG) (WDW)

-against-

ANGELO MIGNONE, et al.,

Defendant(s).

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WALL, Magistrate Judge:

Before the court is plaintiff's letter application dated September 24, 2007 seeking an order compelling responses to outstanding discovery demands. DE [33]. The defendants have filed a response to the motion dated September 26, 2007. DE [34].

Plaintiff served document demands, interrogatories and a deposition notice on May 11, 2007, and states that no responses had been served as of the date of the motion, September 24, 2007, despite plaintiff's good faith efforts to secure defendants' compliance before making this motion. The defendants state they intend to serve their response to the document demand by September 28, 2007 and to produce defendant Angelo Mignone for his deposition on October 8, 2007. They do not indicate if or when they will respond to the interrogatories. Fact discovery ends on October 22, 2007.

Defendants shall comply with all outstanding interrogatory and document discovery by **September 28, 2007**, as they have represented they would do. Furthermore, defendants have waived any objections to the outstanding discovery demands. Federal Rule 33(b)(4) provides that any ground for objection "not stated in a timely objection is waived unless the party's failure to object is excused by the court for good cause shown." The defendants have shown no cause at all for their failure to respond to the demands in a timely fashion. "It is well settled that a failure to assert objections to a discovery request in a timely manner operates as a waiver." *Eldaghar v. City of New York Dep't of Citywide Admin. Svces*, 2003 LEXIS 19247 *2 (S.D.N.Y. Oct. 20, 2003). In cases where, as here, no good cause has been shown for the late responses, a finding of waiver is appropriate. "Any other result would ignore the time limits set forth in the Federal rules of Civil Procedure, contribute further to the delay in resolving cases, and transform Article V of the Federal Rules of Civil Procedure from a structure of well-defined rights and obligations to a system of suggested, but non-binding, guidelines." *Id.* at * 3-4. Thus, any objections defendants may have had to the demands have been waived.

Moreover, Angelo Mignone is ordered to appear for his deposition as scheduled on **October 8, 2007 at 10:00 a.m.** at the office of plaintiff's counsel.

Finally, plaintiff is awarded \$200 as reasonable costs, including attorneys' fees, pursuant to Federal Rule 37(a)(4)(A), the defendants having made no showing of substantial justification for their failure to timely respond to the discovery demands.

Dated: Central Islip, New York
September 27, 2007

SO ORDERED:

/s/ William D. Wall
WILLIAM D. WALL
United States Magistrate Judge